

Charges for updates of canned software are considered to be sales of software, and taxable. See 86 Ill. Adm. Code 130.1935(b). (This is a GIL.)

October 12, 2004

Dear Xxxxx:

This letter is in response to your fax dated January 20, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We are requesting to have a letter ruling on the taxability of our software maintenance. We offer an optional software maintenance agreement that includes updated and revisions to our canned software. The agreement also includes the telephone support for the software. The updates, revisions and telephone support are not separately stated on the invoice.

Thank you in advance for your prompt response in the very important tax matter. Please send me your letter ruling response.

DEPARTMENT'S RESPONSE:

Your letter indicates that the software "maintenance agreement" you offer consists of updates and revisions to your canned software and telephone support for the software. Generally, maintenance agreements for software will be treated in the same manner as other maintenance agreements. This means that the seller of the maintenance agreement pays Use Tax on the cost price of the materials that are transferred incident to the completion of the maintenance agreement. (See 86 Ill. Adm. Code 140.301(b)(3)). If, however, the "maintenance agreement" provides for updates of canned software, then the transaction is governed by the rule concerning software. (See 86 Ill. Adm. Code 130.1935(b)) Under this rule, charges for updates of canned software are considered to be taxable sales of canned software. If the cost of the canned software updates is not

separately stated from other charges under the agreement, then the entire agreement is considered to be a sale of canned software and is taxable.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Sincerely,

Samuel J. Moore
Associate Counsel

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